

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
MCC Georgia LLC d/b/a Mediacom)	
)	CSR-5995-E
Petition for Determination of Effective)	
Competition in unincorporated Tift County, GA)	
(CUID Nos. GA0647 & GA0199))	
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 2002

Released: December 24, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. MCC Georgia LLC d/b/a Mediacom ("Mediacom"), has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in the unincorporated portion of Tift County, Georgia (the "Community").¹ Mediacom alleges that its cable system serving the Community are subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"), and Section 76.905(b)(2) of the Commission's rules.² Mediacom seeks revocation of the certification of Tift County, Georgia to regulate basic cable rates in the Community.³ Mediacom claims the presence of effective competition in the Community stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation ("EchoStar"). No opposition to the petition was filed.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 76.905 of the Commission's rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist

¹ 47 C.F.R. § 76.7.

² 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(2).

³ Petition at 1.

⁴ 47 C.F.R. § 76.906.

⁵ 47 C.F.R. § 76.905.

with evidence that effective competition is present within the relevant franchise area. Based on the record in this proceeding, Mediacom has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds fifteen percent (15%) of the households in the franchise area.⁶

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁷ Mediacom has provided evidence of the advertising of DBS service in news media serving the Community.⁸ We find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer more than 12 channels of video programming, including more than one non-broadcast channel.⁹ Mediacom has demonstrated that the Community is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Mediacom has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Community, that there exists no regulatory, technical, or other impediments to households within the Community to taking the services of the DBS providers, and that potential subscribers in the Community has been made reasonably aware of the MVPD services of DirecTV and EchoStar.¹⁰ Therefore, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom has obtained subscriber numbers for DirecTV and EchoStar, DBS providers operating in the Community.¹¹ Mediacom sought to determine the competing provider penetration in its franchise areas by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Community on a franchise-specific zip code plus four basis.¹²

6. Mediacom asserts that it is the largest MVPD in the Community because Mediacom's subscribership exceeds the aggregate DBS subscribership for the franchise area.¹³ Based upon Mediacom's submission indicating an aggregate DBS subscriber penetration level of 41.42% as

⁶ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸ Petition at 2 and Exhibit A.

⁹ *See* 47 C.F.R. § 76.905(g). *See also* Petition at 5 and Exhibits B - D. Exhibit B contains the nationwide channel lineup of EchoStar and Exhibit C contains the nationwide channel lineup of DirecTV. Exhibit D includes the channel line-ups for Mediacom's cable system serving the Communities.

¹⁰ Petition at 3-5.

¹¹ *Id.* at 6 and Exhibit F-2.

¹² *Id.* at 6 and Exhibits F & G.

¹³ Mediacom submits that it has 3371 cable subscribers in unincorporated Tift County. Petition at 6 and Exhibit E.

calculated using 2000 Census household data, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Community.¹⁴ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable system serving the Community is subject to effective competition.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by MCC Georgia LLC, d/b/a/ Mediacom **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certification granted to Tift County, Georgia to regulate the basic cable service and equipment rates of MCC Georgia LLC, d/b/a/ Mediacom in the unincorporated portion of Tift County, Georgia **IS REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

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¹⁴ *Id.* at 6 (3176 DBS subscribers / 7667 unincorporated Tift County households = 41.42%). The Sky Trends Zip+4 Effective Competition Tracking Report submitted by Mediacom calculates 3176 DBS subscribers in unincorporated Tift County. *Id.* at Exhibit F-2. Mediacom calculates a 2000 Census household count in unincorporated Tift County of 7667. *See id.* at 6 and Exhibit G - J.

¹⁵ 47 C.F.R. § 0.283.